CASUALTY INSURANCE COMPANIES AND EMPLOYERS' LIABILITY LEGISLATION

By Edwin W. DeLeon,
President, Casualty Company of America, New York.

At the Conference of Commissions on Compensation for Industrial Accidents, held at Chicago, on November 10 to 12, 1910, the chairman of the New York commission summed up in a sentence the objects to be attained by all such commissions and the ultimate purpose of all such legislation, with the statement that what they tried to do was to pass a constitutional law, in which the cost for insurance would not be prohibitive and one that would not handicap the industries of the State in competition with those of other States. In other words, the most important practical questions that must be considered in any legislation of this character are constitutionality, competition and cost. I am not unmindful of the sentimental side of this great subject or of the ethical and sociological considerations involved in the doctrine of compensation *versus* litigation. It is mere idle repetition to say that the principles of workmen's compensation are founded upon humanity and justice, and that there is no longer any place among the enlightened nations of the earth for the antiquated, iniquitous doctrines of employers' liability that have survived the onward march of civilization and progress in this country alone. These ancient legal makeshifts, applicable to an age when the relations of capital to labor were comparatively simple, and the hazards of industry relatively light, must inevitably give way in the evolution of the world's development to the more just, humane and rational principle of *sic utere tuo, ut alienum non laedas,* that becomes the keystone upon which our industrial structures shall be reared in the future.

This brings us directly to the query, "What is the attitude of casualty insurance companies toward legislation affecting employers' liability and workmen's compensation?"

Broadly speaking, legislation is the *bête noir* of insurance companies in general, and of casualty insurance companies in particular. During 1910, eighteen legislatures considered 594 bills affecting

casualty insurance, of which 119 were enacted into law. Five States—New York, New Jersey, Illinois, Ohio and Rhode Island—and the United States Congress appointed commissions to investigate and report on the subject of employers' liability and workmen's compensation for industrial accidents. In addition to the States named, commissions are now at work in Massachusetts, Minnesota, Missouri, Wisconsin and Washington. In every case, the casualty insurance companies have contributed their share in helping to solve the problems confronting these commissions. Officials of the companies have appeared at the hearings and have frankly and fully expressed their views, based upon actual experience of years in the practical working out of many of the questions involved. Statistics have been freely furnished to corroborate the statements made. In every way the companies have shown not only a keen desire to learn how their mistakes might be corrected, but a ready spirit of co-operation in arriving at the basic principles for liability and compensation laws.

It is, perhaps, not too much to say that these commissions would be seriously handicapped in their work, and their efficiency greatly impaired, except for the practical help and valuable information furnished by the casualty insurance companies. The one great desideratum of the companies in all this legislation is the conservation of industrial efficiency, and the most adequate protection to employers and employes at the lowest insurance cost consistent with sound business principles.

It is a far cry, however, from the first labor legislation in the civilized world enacted one hundred years ago in England with the help of Lord Shaftesbury and Robert Owen to the present-day systems of regulating hazardous occupations, safeguarding dangerous machinery, limiting hours of labor and periodical inspecting of plants. In the great progress made in labor legislation during the last quarter of a century, the casualty insurance companies, since the organization of the first company, nearly twenty-five years ago, have been useful and important factors. The introduction of hazardous and complicated machinery, the "high pressure" methods necessary in the stress of competition, and the almost universal change from the individual employer to corporate control by the great "captains of industry," have effected radical changes in the relations of employers and employes, and have created a situation far removed from

the relatively simple conditions that existed when the common law doctrines of employers' liability were first established.

In this great evolution, that at the present time may be called revolution, the casualty insurance companies have played a conspicuous part. Some idea of the magnitude of their operations during eight years, ending December 31, 1909, may be gained from the following figures:

Number of policies issued	1,555,014
Premiums received and earned	$124,705,322
Number of notices of injuries received	2,326,606
Amount paid on account of injuries	$62,853,595
Average cost of each injury	$27.01
Number of suits settled for account of policyholders	60,986
Amounts paid for suits settled	$29,263,889
Average cost of each suit settled	$479.84
Reserve for unsettled suits	$4,440,579

In the consideration of these great questions, the attitude of the state is paternal; that of the sociologist and the economist is idealistic; that of the reformer is benevolent, while the attitude of the casualty insurance company is remedial and preventive. It is said that social reformers in their strenuous advocacy of improved social conditions have mainly not in mind an abstract society for whose sake these improvements are to be made, but they think largely of the individual; of the high death rate of the babies from poisoned milk or mothers' ignorance; of the young girl, radiant with health and youth the early victim of a consumptive's grave; of the fatal industrial accident to the wage-earner that removes forever the head of the family, and at once transforms the self-supporting, self-respecting social unit into a shattered and dependent fragment of society, to be helped, and, if possible, rehabilitated in time above the need of charity. One of the nation's leading social reformers has recently said: "There is no merit in feeling for the woes of humanity if we do not, under the impulse of that sentiment, direct our energies to an understanding of the cause of their sufferings and to practical remedies. The medical diagnostician and the clinical psychologist are as necessary to the social worker as the sanitarian, the employment agency and the relief fund. Individual and family

rehabilitation is our specific task, and discriminating and thorough knowledge of individuals is a fundamental means to that end. We must know to what motives particular individuals will respond, what are their special weaknesses and dangers, what are their strong points and their exceptional capacities."

It is along these general lines that the casualty insurance companies are working in connection with the enactment of proposed legislation affecting employers' liability and workmen's compensation.

The difficulties of securing such legislation in the United States are too well understood to need any explanation here. While the tendency on the continent of Europe is unmistakably to substitute a system of state insurance for the liability of the employer for negligence, there is a great contrast between the facility of social legislation of this sort under the flexible constitution of a monarchial government like Great Britain, and the difficulty of securing similar legislation in forty-six sovereign states; each with its own rigid constitution and with the local conditions often designed to impede the passage of effective labor legislation. No better illustration of this is needed than the recent unanimous decision of the New York Court of Appeals declaring unconstitutional the workmen's compensation law of that state, the first legislation of the sort ever enacted in this country. The court held that the act deprives the employer of his property, without due process of law, in violation of the federal and state constitutions, and not justifiable under the police power of the state. Justice Werner wrote the opinion, in which all the members of the court concurred, and said in part: "Under our form of government, courts must regard all economic, philosophical and moral theories, however attractive and desirable they may be, as subordinate to the primary question whether they can be moulded into statutes without infringing upon the letter or spirit of our written Constitution." In discussing portions of the act that are regarded as clearly or probably within the legislative power, Justice Werner said: "We entertain an earnest desire to present no purely technical or hypercritical obstacles to any plan for the beneficent reformation of a branch of our jurisprudence, in which it must be conceded, reform is a 'consummation devoutly to be wished.'"

Prof. Henry W. Farnam, of Yale University, President of the American Association for Labor Legislation, in an address delivered

at the third annual meeting of the association, in December, 1909, stated that the economic ideal of the United States is perhaps most concisely expressed in that part of the preamble of the federal constitution which gives as one of the objects, "to promote the general welfare and secure the blessings of liberty to ourselves and our posterity."

There is serious question, however, whether "economic, philosophical and moral theories," however sound, or the commendable impulses of benevolence or charity, will justify in this country, the compensation laws that have been adopted by some constitutional monarchies. In some of those countries, working men are often treated as a sort of dependent and somewhat irresponsible class, requiring the paternal care of the state. No such distinctions exist or are encouraged here. Our laws are presumed to treat all those subject to the law with equal consideration and not to impose upon one class different responsibilities or obligations than upon another, but to hold each responsible for the consequences of his own acts, and not for the acts of others. Justice Werner emphasizes this feature of our jurisprudence and says: "We are unlike any of the countries whose industrial laws are referred to as models for our guidance. Practically all of these countries are so-called constitutional monarchies, in which, as in England, there is no written constitution, and the Parliament or law-making body is practically supreme. In our country, the federal and state constitutions are the charters which demark the extent and the limitations of legislative power; and while it is true that the rigidity of the written constitution may at times prove a hindrance to the march of progress, yet more often its stability protects the people against the frequent and violent fluctuation of that which, for want of a better name, we call public opinion."

It must also be borne in mind that commerce and business do not recognize state lines, and that in the enactment of legislation of this character, a manufacturer is confronted with competitors from other states, who may be subjected to very different legislation. Under such complex conditions, uniform state legislation would be highly desirable, although extremely difficult to accomplish, owing to the difference in local conditions, and, therefore, in local public opinion. The states that are newer in manufacturing and industrial growth are not so ready to adopt legislation that has been approved

and is readily enforced in the older states. Enlightened public opinion will, however, in the long run, come to realize that the regulation of the conditions of employment and adequate compensation for injuries of occupation under some fair optional plan are not only demanded by the dictates of justice and humanity, and are for the best interests of the whole community, but that from a purely economic point of view they mean increased productiveness, a higher degree of efficiency of employes and greater profits for the employer.

The attitude of the casualty insurance companies in the enactment of such legislation is helpful and hopeful. The companies have been criticised by some for the increase of liability rates in states where employers' liability laws have been greatly extended and enlarged. In justice to the companies, let it be said that much of the increase is due to uncertainty and to the necessity of fixing rates to cover the most extreme and possibly unreasonable construction that the courts may place upon such new laws. Under most employers' liability acts as now amended the employer is practically an insurer of his workmen and is an insurer for an indefinite amount limited only by the caprice of a jury. If this understanding of the enormous responsibility of employers under present laws is sustained by the courts it is extremely doubtful whether the increased rates of premiums are sufficient to enable the companies to carry on the business of liability insurance in future without a heavy loss.

In the state of New York, for example, the legislature of 1910 attempted to do what no legislative body in Europe has yet done; it enacted at the same time two laws, one a wide open employers' liability act, and the other a workmen's compensation law, and then gave to injured employes the right to choose whichever one was regarded as the more favorable.

The repeal of the compensation law does not, however, help the companies to any great extent, for the two measures have not in practice achieved the great purpose for which they were designed—of replacing the old idea of employers' liability with the new principle of workmen's compensation. Experience has shown that few workmen will demand the relatively small sum due them under the compensation law in preference to a suit under the employers' liability act with the chance of recovering a large sum in damages from a jury.

The present situation in many of our states requires the utmost

caution in the work of the underwriters, for the casualty insurance companies have an important trust in their keeping and must create and maintain a fund that will be amply sufficient to meet the demands of the great new burdens unloaded upon them by employers, and they must also be ready and able to provide adequate compensation to injured employes. It would be nothing short of a national calamity if one of the leading companies should find that it had not procured rates sufficient to cover the new and greatly increased obligations created by the laws recently enacted. The insurance companies have been accused of secretly, if not openly, advocating the passage of some of these laws, as an excuse for raising rates, and adding to the already great profits that they are assumed, however erroneously, to make out of their patrons. As a matter of fact, the people make the laws, and the companies make the rates, but the solution of the problems created by the laws is left to the insurance companies. Some one has said that you cannot lower the mortality in a community by abusing the undertaker. The companies are doing the best they can to meet the trying conditions that constantly arise through the enactment of new laws. They do not waste time in criticising these measures or in emphasizing their defects, but by an honest concerted effort they are striving to find the best way out for the benefit of all concerned. Above all, the casualty insurance companies do not desire to perpetuate the present unsatisfactory system of compensating workmen for injuries sustained, and will welcome any legislation that provides a fixed definite scale of compensation for occupational injuries, which will enable the companies to adjust the rates of premium upon a basis that has for its ultimate purpose the elevation of the business of liability insurance to the highest plane of utility and permanence.

In closing, I am reminded of the words of one of our best known, best beloved and most eminent social workers, Jane Addams, on the human conservation in industry: "We must insist that the livelihood of the laborer shall not be beaten down below the level of efficient citizenship. From the human standpoint, there is an obligation upon charity to discover how much of its material comes as the result of social neglect, remedial incapacity and the lack of industrial safeguards. Is it because our modern industrialism is so new, that we have been slow to connect it with the poverty all about us? The socialists talk constantly of the relation of economic wrong

to destitution, and point out the connection between industrial maladjustment and individual poverty, but the study of social conditions, the obligation to eradicate poverty cannot belong to one political party, nor to one economic school, and after all, it was not a socialist, but that ancient friend of the poor, St. Augustine, who said: 'Thou givest bread to the hungry, but better were it that none hungered and thou hadst none to give him.'"